Bailment.

Definition: A delivery of goods, on a contract expressly or impliedly, that they shall be received by a bailee, or according to his directions, when the purpose for which it shall have been agreed, done on 13, 48, 236, 637. £2. A delivers goods to B to keep while B is absent. Cloth delivered to a tailor to make into clothes, etc. 1 Term. 288, 12 Mo. 482, Co. El. 622.

Every bailment vests a qualified interest in the bailee. 1 Term. 131, 7. 1 Chet. 225, 1. 4 & St. 12, 167, 172. Dec. 29. 485. 248, 55, 56, 569. 3 & St. 45. 8 Term. 132, 7. 16, 172. 2 & St. 13, 129. — (Here a “bailee,” as distinguished from other bailees, is said to have a “property” in the goods. But there is no such distinction.) Term. 112, Vel. 172. 1 & St. 129. — (Bailee, it is true, has from the nature of the bailment, a higher interest than some other bailees; but all bailees have a special property in the goods.) 1 Term. 392, arg. 398. vid. 3 & St. 48.

That a mere lawful不过是 gives a special property, vide 3 & 31, 2, 106, 392, arg. 397, as in 6th, 63, finder. — A lawful probably is — vested a right of possession.

From bailee's obligation to restore the thing bailed (at supra) it follows, that bailee must keep it according to the terms of the contract, or be responsible to bailor, if it be lost or damaged. Still, however, as the bounds of justice cannot be transgressed, if bailee were in all cases made liable, at all events, it is a general rule, that he is not liable, if the loss be happen without any fault on him. 1 Term. 130, 240. — Ol. to determine when he is in fault, the nature of the bailment, & the quality of the thing bailed, as well as his own conduct, are to be considered; — for different bailments require different degrees of care & diligence, vide 8, 1. To ascertaining the requisite degree of diligence, in every case, is the principle.
Bailment.

object of enquiring under this title. Ion. 8.

General Rules as to the degree of diligence required, or 
Principle, of bailer, in different cases.

The most general rule is, that bailor, under a general acceptance, 
is bound to keep, or put the case may be, the goods, with a degree 
of care, proportioned to the nature of the bailment. Ion. 3. In some 
cases, the degree will be greater, in some less, than ordinary 
diligence: for the degrees of care are various. Ion. 3.

Note: The acceptance is general, when there is no special agree- 
ment as to the degree of care to be used by bailor: so that the degree 
is left to be settled by the law: Special, when there is such an 
agreement, either extending or qualifying, his liability.

Definition of different degrees of diligence & neglect:

Ordinary diligence is that, which rational men in 
general use in conducting their own affairs; or, in other words, 
that, which every rational man of common prudence, uses in the 
management of his own concerns. Ion. 9-10. — The degree of 
diligence each side of this standard, are not distinguished by 
any appropriate denominations. What exceeds it, is called more 
what falls short of it, less, than ordinary diligence. Ion. 10.

To every degree of care or diligence, there is a corresponding 
degree of default or neglect: Thus, the omission of ordinary 
care, is called "ordinary neglect." Ion. 11-15. 31. This is called, 
"levis culpa."
Bailment.

The omission of that care, which very attentive and vigilant person, only takes of their own goods, is less than ordinary neglect. This is called slight neglect, "levigibita culpa". 

(1. 13. 31. 

The omission of that care, which even inattentive and thoughtless men take of their own goods, is greater than ordinary neglect, commonly called gross neglect, "cata culpa", or "heleologia". 

(1. 13. 35. 

The last degree, viz. gross neglect, is generally regarded as an evidence of fraud in bailee. (2. Ray. 915. 1. 13. 35. 34. But in all cases, however: Ex. If bailee suffers his own property of the same, or similar kind, to be lost by the same negligence by which bailor is lost. 1. 15. 35. (3. 10. 15. 

In order to apply the general rule first laid down under this head (2.8) to particular cases, it is necessary to observe the three following rules:—1. If the bailment is for the benefit of the bailor only, nothing more than good faith is required of bailee, under a general acceptance. (1. 10. 34. This is liable, of course, for gross neglect only; or rather, for a violation of good faith. (1. 15. 15. 21-2. 32. 57. 55. 56-5. 10. 11. 2. 4. Ray. 915. (vide, 4. Co. 83. 6. Where it is held, often, that bailee must keep safely, at his peril. But this is not law. 

(But the bailor may, by special agreement, extend his liability beyond the general rule. (1. 22-3. 07-2. 88. 2. Ray. 910. (vide "deposit").
Pactum:

III. When bailee only is benefited, he is liable for slight neglect, i.e., he is bound to more than ordinary care. (S. 15-16. 23, 33. 89. 90-1. (Post "Commodatum."

III. When the bailement is a benefit to both parties, the obligation changes in an even balance. Therefore bailee is bound to ordinary diligence only; and is liable for ordinary neglect. (S. 14, 22-3, 32-3, 701, 165, 247. (Post "Sodaturn."

The last general rule (S. 38) holds, whenever the acceptance is general—i.e., when there is no special agreement altering the extent of bailee's liability.

Kinds of Bailements.

Bailements, according to the common law, are divided into kinds:

I. The first is called "depositum," i.e., a delivery of goods, to be kept by bailee for bailor, without regard. (S. 52-1. C. 3872, 247. Called also naked bailement. (C. 3. 247. by last author? 146, 243. C. 518. The bailee, in this case, is called the "depository."

III. Bailement of the second kind, is called "Commodatum," i.e., a gratuitous loan of goods which are useful, to be used by the bailee, for his own benefit. (S. 38-15, 249, Bull. 72, 50, 59. 146, 243, 247. To be restored in a specific. (S. 519, 59. Sometimes called loan for use. The bailor is called the lender, the bailee, the borrower. The bailment may be called "Lending to Borrowing."

II. This second kind differs from a mutuum, which is also a loan, but generally gratuitous. But the latter is a loan for consumption, i.e,
Bailment.

be repaid in property of the same kind, but not in the same specific property. Ex: loan of money, wine, corn, etc. In these the absolute property is transferred to the borrower, who, in case of a loss, must bear it, at all events. 1 Pet. 4:19. 1 Cor. 2:4. 1 Thess. 5:12.

A mutuum is, therefore, not a bailment.

III. "Locatio" + "Conductio" = i.e., a delivery of goods to be used by bailee, for hire to be paid to bailor. The bailor is called "locatarii" & the bailee "conductus" or hirer. See 9:13. 10:19. 1 Pet. 3:25. 1 Cor. 7:3. 1 Thess. 2:43.——Jones makes this a subdivision of his 5th kind, which he calls "locatam." 10:19.——This is what we call, n. b.: Selling v. Hiring.

IV. Delivery of goods, as security for a debt, due from bailor to bailee. This is called a "pactum" or pledge; in Latin "vadium," or "jusno recautum." The bailor is called "pactarii," & the bailee, "pactae." See 9:13. 10:19. 1 Pet. 3:25. 1 Cor. 7:3. Bull. 72. 1 Pet. 3:25. 1 Thess. 178. C. L. 205. 4: Cor. 268. 236. 246.

V. Delivery of goods, to be carried, or for some act to be done about them, by bailee, for reward. See 9:13. 17. 1 Pet. 3:25. Bull. 72. 1 Pet. 253.——Called in Latin, when to be carried, "locatio operis mercium vehendarum." 10:13. 124. 144.——When some other act is to be done, "locatio operis faciendi." 10:50.

This 5th kind includes a delivery to a common carrier, any one, who receives goods in the exercise of a public employment, e.g. a private carrier, or other private bailee. See 9:13. 17-18. 1 Pet. 253. Bull. 72. 5.

(12) Rules as to the different kinds of Bailements, in their order.

II. Taker,tailorment, or deposit. In this case, the bailee is bound only to good faith; he liable, at most, only for gross neglect (2d. 645. 107-2. 1st. C. 247. 3d. & 4th. 129. Bull. 72. 151. M. 137. 1st. 193. 2. Ray, 999. 913). Such neglect being generally regarded as evidence of fraud. 2. Ray, 911. 3d. 432. 1st. 581. 2d. 13. 30. 24. - The reason of the rule is, that the bailement is advantageous to bailee only. 12. 603. 467.

In some of the books it is said, that "ordinary" care will excuse (as of nothing else except) 2. Ray, 913. 1st. C. 247. But the word, in these cases, appears to have been used without any distinctive meaning.

But he is not, in all cases, liable even for gross neglect. Indeed, he is not, generally speaking, liable at all, for neglect, as such, in the abstract; but for fraud only. If then, even gross neglect does not furnish evidence of fraud, not liable: E. G. If he treats his own goods, of the same, or a similar kind, as to bulk or value, with the same neglect, 2d. 603. 2d. Ray, 914. 55. 1st. 1099. 4th. 2300.
Dismantle.

As the depositor is a "careless, idle, drunken fellow, it leaves all his doors open!" by Holt, 232 Ray. 914-15. 1 Pors. C. 24.5.

But these rules do not hold when, by special agreement, he assumes a higher responsibility. The man thus makes himself liable to any extent. For the general's rule relates only to a general acceptance (Per. 88. 2 Ray. 535. 911-13. 3 Bear. 4. 8. 245. 6. 394); i.e. to cases, in which there is no express agreement, as to the degree of care to be used, or as to the extent of his liability.

Another exception, according to Jones, is where the deposit is in consequence of the bailee's officiousness, or offering to keep the goods (the acceptance is general); for the owner is prevented, by this officiousness, from entrusting them to a person of approved vigilance. 67. cites no authority. — D 82. go.

The opinions are contrary to the general rule (Co. L. 89. a. b. 4 Co. 83 b. Southard's case — 81 Co. 8. 81). Southard's case may on a decision of goods to deposit: to be kept by him "safely." He pleaded to the consent of deposit, that the goods were stolen; but was adjudged at his peril. The decision in this case appears to be right: For the acceptance, as it appears upon the record, was special, to keep "safely." Besides, the plea was ill, in not averring, that they were stolen without his default. 80.

But the doctrine, advanced in Southard's case, is, that a general acceptance obliges a depositary to keep the goods in his peril; that he is liable if they are stolen. That an acceptance to keep, "to keep safely," is the same, as that, therefore, he keeps them at his peril, unless the acceptor especially, to keep as he keeps his own goods. 3 Co. 515. 2 Bl. 238. 241. 4 Co. 83 b. cite. 1 bear. 224. Com. 133. 51-142. 1 Ed. 338. Helm. 549. 5 2. (But)

(over)
Fuliment.
This doctrine is expressly denied. L. R. 635. s. 11. v. 913-16. s. 29.

Some too have taken a distinction between special agreements to keep. founded on a valuable consideration, or agreements not so founded. viz. that the latter is not binding as a contract. (199. 2. 244.) But this distinction is exploded. The delivery of the goods is enough in sufficient consideration. L. R. 639. 919. v. 22. Art. 29. 192. 40. 4. 87. 8. Ceare. 479. 245. 8. 394. See "Contracts" 118.

It has been held that if goods are left with a depository in a locked chest, of which latter takes the key, the former is liable for the chest only, not for the goods. For this, it is said, are not entrusted to the depository. (Co. 83. 4. 82. a. 2. 192. 287. 3. 4th. 47. Co. 89. 4r. 2. 69.

(15) Denied by Holt. (L. R. 914.) The bailee has as little power over them, as to any benefit, when out of the chest, as when in it. As much power to defend them in one case, as in the other. Neither C. nor Holt, takes any notice of bailee's being ignorant of the contents, or not. But this ought, perhaps, to be regarded. For, upon equitable grounds, at least, that circumstance might be very material, or indeed, all-important. If the contents are known, it is like common cases of deposit. If not known, ought he not to be excused, at least as to the goods, unless the nearest course be to guard, even as to the chest itself? (Co. 51-4.

But even a special agreement (at p. 13) to keep safe, does not subject bailee, at all events, even if reduced to writing. Exceed by acts of God. L. R. 915. Casualties. In. 62-3. 78. So it will
not make him liable for acts of violence, as robbery. If — 52-3: Provided he is guilty of no neglect, which contributed to the loss. — Like a covenant, that after shall have, security, re.
This does not limit ago the acts of wrong doing. — 52-3: Provided he is guilty of no neglect, which contributed to the loss. — Like a covenant, that after shall have, security, re.
If — 52-3: Provided he is guilty of no neglect, which contributed to the loss. — Like a covenant, that after shall have, security, re. 
In case of theft, sent. In. 62-3. 4 Co. 83."

Suppose the deposit distrained for rent to, depository, landlord. He would be liable, on ground of guilty neglect, if fraud, if he re-
 moved his own goods. In. 142. If he was honest, could not bai 48. 
recover in insile a garnishe. If bailor should redeem the goods by 
paying the rent; he might recover in a garnishe for so much 
mony. Bas. bail, 20. 6 S. T. R. 305. 3 Rep. 87. Exp. Sig. 10 Q185 (170). 
21 R. 164. See "Garnishe."

If landlord should sell the goods, to thus satisfy the rent, could baila 
recover the amount agst. bailor, as money paid? R. [1 Ser. 52. 
6 C. 162. 20 26. 5 Ex. 38.] that he cannot recover, because the 
mony, as much may never baila. In. Suppose conversion of 
other goods by wrong doing, sale of (not) goods or execution. 
What proceeds thereby can bailor have? 

Prove his agt. depository, if he detains the goods after demand. 155. 
on otherwise converts them. 110. 255. 10 co. 185. Co. 8. 70.
He may use the deposit, it is said, where he is at expense in 
keeping. In. 114. (C. 53.) "Security + a garnishe are concurrent with 
t vowel. Bush 72. (C. 59. 30. 74.)"
Commodation—i.e. a gratuitous loan of goods, to be used by the bailee, to be specifically restored. 20. 69. 89. Ray. 915. 913.

The (the benefit being to the bailee only), he is bound to more than ordinary care; it is liable for slight neglect, as, as sometimes said the "least neglect." 91. Bull. 72. 160. 244. 180. C. 249. 89. Op. If a horse is bonored, or a bridge or his servant puts him into a stable not locked, it is stolen; he is liable. Securing, if the door had been locked. 20. 20. 20. Ray. 910. 917. v. 94.

It is a general rule, indeed, that the bonorner is liable in case of mere theft, unless he takes extraordinary care on his part. 92. 92. 91. 91. 91. 89. Op. Bailee entrusts the thing (to be carried to the owner to a person of approved fidelity) from whom, however, notwithstanding great care, it is stolen; bailee not liable. 92.

Not liable for a loss by such forces as he cannot resist. 92. Ray. 915. 89. 20.

E.g., generally speaking, the bonorner is prima facie, not liable for a loss by robbery, care being neglant of open violence. 91. 91. 91. 89. Op. Bailee robbing of a house on the high road, by a force, which he cannot resist. 92. Ray. 910. 89. 20.

But bonorner may be liable even for robbery: 93. If he exposes himself to it by his own rashness. 89. Op. If he travels a haunt of robbers in the night season, especially. 93.
Bailee of this kind, is not liable generally, for any of those accidents, called inevitable, as lightning, earthquake, etc., that might occur in the use of a horse. But he may make himself liable for losses this occasioned, by a previous breach of trust. Ex. If he borrows a horse for one journey, & goes another, or more fully detaining for a longer time than he was trusted for. Here, he is liable for all accidents, as he would also be for retaking. Tor. 93-5. L. R. 918. 1 Bou. C. 249-50. 1 Bos. 244. This rule applies to all kinds of bailment. L. R. 917. 7. 29. 1 Bos. 237-8. C. 244. 1 Bou. C. 253.

So he may be made liable for those accidents (as for retaking only) by his own rashness. Ex. If he places the horse under a building which is in manifest danger of falling, & it does fall while he was trusted for. Tor. 95.

III. "Locatio et conductio." i.e. a delivery of goods, to be used by bailee, for hire. L. R. 913. Ex. A horse hired to ride. 1 Bou. 29. extended to use. Esp. 928.

By this contract, the bailee, on hire, gains a transient qualified property in the thing bailed; & the bailee an absolute right to the stipend or price. Tor. 119, 120.

After the bailment being reciprocally beneficial, the bailee is liable, according to the general rule, for no less than ordinary neglect, being bound only to ordinary diligence. Tor. 114, 125. 70.
But it is said, Holt (P. Ray, 2. 10.) that he is bound to the utmost diligence. If so, he is liable for slight neglect; and then the liability of a hirer is the same as that of a borrows. P. Ray, 9. 10. marg. In 1 P. Ray, 2. 8. Bull, 70, the rule is merely quoted from Holt.

But 1st. Holt's proposition is not a dictation. Besides, Holt himself, at P. Ray, after him do make a difference between the liability of the hirer, and that of the borrower. They lay down the rule generally, that a hirer is excused in case of theft. P. Ray, 9. 10. P. Ray, 2. 8. But there is no rule thus generally expressed, in favour of the borrower, in case of theft. (Ib. 70.) However, is their proposition in this general form, correct?

3d. Holt relies for his authority, solely on a quotation from Bracton, fol. 52. f. v. 2. This is, "ex deditae custodia, qualern diligenter juvant, paternae pignors, nunc rebus adhibet." Now, first, in Latin, superlatives are often used where the quality is not intended to be expressed in the superlative. Ex. "Senecta occulta," slight neglect. Don 31. Again Bracton's words are transcribed from the Commentaries of Chaucer, a Roman jurist, & this is the only Roman commentator, who uses the superlative adjective. Don. 121-3.

3d. As a principle, there is then no decision, nor any clear authority, requiring more than ordinary diligence of the hirer, & analogous clearly require not more.

The thing hired, then, is to be used & kept with ordinary care. The hirer is excused in case of rotting, unless occasioned by his own imprudence, or want of ordinary care. Don. 125. Hence hired.
Remedies.

When a chattel is let for use, bailor is not bound to repair it. Song. 7.20. 1 Sam. 32.1. 1 Chr. 5.31. See Covenant.

IV. A man delivers goods to another, under an absolute bill of sale, but it appears from another instrument, that the delivery was to become a debt; if it is agreed in the latter that the vendee may sell the goods, when he pleases, it is also that vendor (but joint to vendee right to sell) may redeem the goods are a pledge. 1 Pet. 114.

This contract being a benefit to both parties to the bailor, by securing his debt, to the bailee, by procuring him credit, or prolonging it, the bailor is bound on failure, only, to ordinary care, and liable for no less than ordinary neglect. 1 Pet. 105. And as the rule is fully established. D. Ray. 917. "Due diligence"—ordinary care—excuses. Dorr. C. 232. Sol. 528. 4 Com. 235.

It has been held, that a bailee is bound to keep the farm only as he keeps his own goods. 4 Co. 83 b. 6 Co. L. E. q. q. a. cited 1 Pet. 105. 1 because he has a property in them." But every bailee has a property in the thing bailed (ante p. 1) 1 Pet. 112. 1 B. 245. 3 T. 109. 129. Pet. 172.
Parlament.

This doctrine in Coke. It is subject to the law only for gross neglect, not even for that, as the case may be. But this is contrary not only to the general principle, but to the weight of authority.


He is excused, according to the general rule, in case of necessity, if caused by his own fault. 8. San. 525.

(27.) It is held in Coke (4th Rep. 32. 6. Co. L. 59. as that if the same be taken, the tenant is not liable. (1st. 237. 6. San. 525. 8. 23. 8. 174. 8. 3245.) Because he is to keep only as his own goods, having a property in them. (at 24.) Jones holds, unconditionally, that he is liable in case of mere theft, because a bailee cannot be considered as using ordinary diligence, or who suffers the goods to be taken by stealth, re. 8. San. 108. 7. 37.

(28.) Is not a question of fact, in every case of theft, whether ordinary care was used or not? To Rent. 299. 6. 28. cited 8. San. 51. 8. 12. 116. 138.) It is the general doctrine by Holt. He seems to leave it on this footing. 1st Ray. 917. 6. Rent. 121. 6. Sal. 522. 4. San. 288. 8. San. 262. 6. 918. See 2nd Ray. 918, as to factors, ex post facto in reasonable care of others. See also commentaries. 8. 39.

That tenant is liable in case of theft, unless he proves extra-
ordinary care. 8. San. 32. 6. 128. 138. — So, in case of private carriers, he is by theft excused, if the tもの is not kept up with reasonable care. Rule adopted in Jones himself. 8. 138.

Paiment

9th. 8th. 4th. 4th. Determined by payment or tender of the money due, on the day; & the whole interest is vested in tenant. 1 Boc. 237-8. Tender or refusal being for this purpose, equivalent to 2 Boc. 31. Payment. 1 Boc. 237-8. Co. L. 264, 265. 1 Co. 111. 264. 265. Co. R. 72, 73. 64. 60. 2 Boc. 35. 62. 60. 52. 27.

If therefore, after payment, or tender, & demand of the same, on the day, tenant retails it, he is a wrong-doer, & in this case, he is liable for any loss, or injury, in all events; even for inevitable accidents. 1 Boc. 111-12. 1 Boc. 264. 1 Boc. 264. 63. 64. 1 Co. 523. 63. 64. 1 Co. 523. 62. 60. 52. 27. This being a breach of trust. 4 Co. 235. 62. 60. 52. 27.

The refusal to redeem, after payment, or tender, at the day, & after the same, is vested in tenant. 1 Boc. 237-8. 4 Co. 235. 62. 60. 52. 27. 1 Boc. 237-8. 4 Co. 235. 62. 60. 52. 27. Refusal to redeem is by the tenant's servant, acting regularly in his master's business. 1 Boc. 235. 62. 60. 52. 27.

So, also, in these cases, the tenant may, if he so elect, maintain an action on the ejectment, implied by the lease. 1 Boc. R. 72. 62. 60. 52. 27. 1 Boc. R. 72. 62. 60. 52. 27.

But tho' the tenant may, upon various considerations, hold the debt & payment, the lawful interest before he can maintain either action. 1 Boc. R. 72. In both actions are equitable. See Trench, 64. & Ussery, 35.

Refusal to redeem on payment or tender, is an indictable offence at Com. yellow. This is a rule of Foley. 4 Co. 235. 62. 60. 52. 27.
Said by Jones (Op. 111) to be laid down in C. St. P. P. R. that on tender of refusal, the thing bailed ceases to be a pledge, it becomes a deposit. The proposition, at any rate, cannot be true. For a depositor is liable only for gross neglect (p. 12.) But the bailee in this case, is liable in case of loss, at all events. Indeed, the creditor ceases, in such case, to be a bailee. After tender of refusal, he is responsible in his own name. (I do not find it as laid down by Buller.)

In some cases the bailee has a right to use the pledge; in others, not. But this right, when it exists, is said to be founded on the bailee's consent, expressly given, or presumed. Op. 112.

The presumption of consent exists, generally, in not, as the pledge is likely to be made better or worse, in not at all affected by use. Op. 112-13. (1. Case of being made better. A setting dog, for use he is considered un useful habits. Op. 113. Here the presumption exists.

3. So, if it will not be injured by use. Etc. Jones, car-wings of god, &c. But here the bailee uses them at his peril. He is said that he will be liable even in case of robbery. 1 Com. 338, 3d. 532. 1 Barr. 287. Op. 113. Bull. 327. 10 Rep. 385, 673. C. L. 19. D. Ray 717. For the use is advantageous to bailee only, not in discharge of his duty as bailee. It is a mere indulg-
3. So, if a farmer is at expense in keeping the pledge, he may use it; Ex. a horse, &c. &c. 1 Sam. 14, v. 25. Ex. 124. Lev. 522. Bull. 72. 2d Ray, 910. Exp. 525. He is entitled to use in this case, by way of recompence (1 Sam. 14, v. 25.)

The farmer, in this case, & in the first, is not liable, I suppose, for nothing, while the goods are in use, as in the 2d case he is.

The right in the 2d case arises from a presumption found in indulgence, in the present's first, on a principle of justice & duty.

According to the Roman law, the farmer is to account for the benefit of the use; not so at Coram, am. sent. 1 Sam. 115.

But if the farm will lie some for use (if the keeping is not expensive), farmer may not use it. Here the presumed consent does not exist. Ex. Cloth. &c. 1 Sam. 113. 4 Coram, 527.

If he does use them, trover. I conclude, lies in the first instance; in unlawful use, is a conversion. See Title Trover, 3d Brow. 287. 1 Coram, 321. v. 5 Bac. 265.

The law as to farmers, applies to goods found. 2d Ray, 917. And, according to Coram, the law withholding a contract by the finder, to use ordinary diligence. 1 Corn. C. 262. - 2d Coram, 527. Exp. 379. 1 Bac. 243. 1 Leon, 120. 2 Buller, 21. Or. 10. Contra, that he is not.
Bound to keep safely, not liable for negligent keeping.

On first thought, the finder does not seem liable on principle for anything less than gross neglect. (2 Dill. 938.) Because the sole benefit goes to the owner—unless the owner is compelled to pay finder for his trouble in safe keeping. But there is a great difference between finding & deposit. In the latter case the owner has his option to deliver or not; he selects his depository. In the former, not so. It is not, indeed, a strict bailment.

The finder ought to use ordinary care, or not take the thing. Donnell, then, seems right.

In Conn., a Stat. has made provision for compensating finder. He is therefore, according to general principle, bound to ordinary care, if he would not otherwise be. Stat. C. 875-5. The Stat. indeed, expressly casts the risk on owner, finder being "faithful." Stat. C. 635. This provision seems to require ordinary care.

In the case in Cor. 1829, the decision was merely, that trover would not lie; it was right. In trover his only for a misdemeanor, a positive wrong; as trespassing taking, unlawful use, &c. C. 210. Stat. 635. 143. 140. 6 & 5 & 6. 257. 28. 28. 28. Whereas the case in Cor. 1826, was for negligence, which clearly is not conversion, & which could not, therefore, support trover. 257. 8 C. 140. 6. 6 & 5.

A finder of goods has no lien upon them at com. law, for his trouble, expense, &c.; but is liable to trover, or refusal to deliver, the his expense is not tendered. 2 Cor. 25. 26. 1117. see Cor. 575. Stat. 637. - see "Trover 34."
Bailment.

Case of salvage different. 2 H. 3. 254. 2 B. R. 193. 5 B. r. 270.

But this depends upon the maritime law.

Sure. Can the finder recover a recompense in any way? If he can, it must be by indent. He must not make sue, in which the C. must

unsue. A special instance is, as well as a promise. Lord

Ch. J. says, if C. would go as far as it could go, there was

for enforcing the payment. 2 H. 3. For. But on what just

enforcement? Comm. law can it be enforced? — See Voluntary

Comp. 106. Esp. Dig. 87. 90.

But a refusal, by finder, to restore the goods found, is not, of course, a conversion. Ex. If the evidence of ownership, in the person demanding, is not sufficient. 2 B. n. 312. Esp. 790.

Suppose A. finds B.'s goods. C. claims them; suits A. for refuses to deliver, 
recovers. A. then makes demand, sues for A. to prove his property, Can he recover? 1 B. r. 242. Note

the analogy to administration repeated on. 3 H. 3. 125. 2 B. r.


2 Som. 180. 1 Const. 345. — I think the first recovery is a bar to the second action. But the S. C. in Cont. was decided otherwise. See “Reven. 67.”

If A. earns, having tendered B. B. recovers in trover; yet the firm is entitled to his debt, or may have his action to recover what is due; but he must first make a demand of the money, tendered, i.e. to entitle himself to judgment & costs. Otherwise the plea of tender, with a total tender, is just, will defeat him, in the action; this he is entitled to take the money tendered,
If perishable goods are pledged, & decay; yet Farnese may recover his money: For the duty continues, the pledge being only a security, not payment. 1Bra. 28. Brev. 179. Co. L. 29. 4 Com. 255; 9. Crad. 523.

So, of random contracts, when the hostage dies, a is retaken.
Song. 67. 3Brev. 1734. 1Ct. R. 383.

(38) So, too, while the pledge remains, unimpaired, in Farnese's hands, he may sue for his debt, & recover, unless there was an agreement to the contrary; i.e. that he should rely upon the pledge only. 4 Com. 258; vt. 49. Cap. 25. 2Clev. 110; Brev. 179.

If the money is not paid at the day, the property is absolute, at law, in Farnese; but Farnese has a right of redemption in Equity. 1Bra. 235; 3S. 2 1B. 33. 398. 2 Blunt. 2c. 179; 4 Com. 258. But this right of redemption in equity exists, I trust, only where goods remain in the Farnese's hands, or have been merely assigned as a pawn, i.e. as security for the debt. For if absolutely sold, a right of redemption cannot remain. So, Rule in C. R. 1822. (See Christ's Observ. vol. 23. p. 178): And that Farnese must refund the excess, that he receives, on the sale, over the principle, interest, & expenses. (But the rule is otherwise, as to a mortgage of personal chattels, 2cmt. 8 John. 90-8; 2 Caines Cap. in 226. 3 John. 257. 179. 50 378.)

So, even tho' the agreement is, that the property, if not redeemed at the day, shall be considered as sold. 2 Brev. 696; 1Bra. 235; 1Rut. 214. Once a pawn, always a pawn.
A factor cannot farm principal's goods or as to give farmee 7th 79. a lien as at the principal. He cannot thus transfer the lien to which he himself has, nor create one, even to the same amount. Jow. 34.
But on tender to the factor, of what is due to him, various lies apt to farmee. St. 1178. 69. 82. 1138. 382. 4 Com. 227.

And it has been lately held that no tender is necessary. [Ffax] 39.
The farming being a breach of trust in the factor, of conversion. 5th 79.

After the day of payment, farmee may sell the property, it being absolute in him, at Pan. Co. C. 305. (*After 12 months or a day, it is held in A. P. Chr. Obs. 116. 8. 170. In this case, not time of payments was, but probably, appointed by the parties.)

It has been said in some books, that farmee may, before the day of payment, assign the pledge; i.e. transfer it, with his lien upon it, to a stranger. 4 Com. 227.

It was the doctrine inferable from Co. 1177. 38. 89. 118. 31. 10 Bux. 2. 39. But the doctrine inferences from Co. 244. 118. 77. 33. 89. Co. 1175. 89. 89.

And a lien is a personal right, and cannot be transferred. T. A. 3. 102.

0th. 7 East. 6. 118. 31. It arises out of a fiduciary contract, which is not assignable.

Besides, it is a rule that a pledge cannot be perfected by force. 16th. 40. 118. 235. Asa. cit. But a man is capable of perfecting whatever he can convey in his own right. Co. 118. 123.
Paiment

Brooke also lays down the rule, that it cannot be "altered." Cit. Bac. 238. 1 Taz. 357. It is nature of a personal trust, the owner may be willing to entrust his goods to one, not to another.

If bonnere might assign at pleasure, the owner must be in danger of loss. Assignee might be a braver or a vagabond. Different case from that of land mortgaged, which cannot be "altered."

(41)

2 Term. 591. 598. A. Bonnere to B. B. before day of payment, promising to C. A. brings bill to redeem of B. Decreed to pay all the money that C. had advanced to B. But the bill was after the night was forfeited at law, therefore he must go equity. Cas. 373. N. C. 1409, 420. (F) Note. Else, only wrong the application in Chanre. 3 D.) As equitable claim may therefore, the same as if the assignment had been after forfeiture. If tender had been made before forfeiture, the result, that, would have been different. Nid. 179. 3.

Again: A. Bonnere cannot be taken in execution, nor attached for bonnere's debt. Bac. 238. 352. cit. Tho. 1 P. in Com. 470. 258. 479. 474. 124. cit. The "oweable," in this case, must be the same, as shows to govern on the question of assignment before forfeiture.

In the other hand. The bonnere may forfeit his right in the hinge by failing to; that the king cannot - have it without paying the sum due to bonnere. Bac. 1291. 1 Bulst. 29. 4 Com. 989. 179.

The conclusion from these rules & analogies, seems to be, that bonnere cannot assign before forfeiture.
Taintment.

Anciently it was deemed essential to a farm, that it should be (4,2) delivered at the time when the money was lent, or the debt accrued; otherwise it was considered, not as a pledge, giving a special subject to the holder; but merely as a license to execute a credit to. 1 Bac. 208. fishing as a law nor is. 1 Bac. 218. 2 Leon. 35. Well. 104. 1 N. 35. ayn. 359. (The delivery may, of course, countermote. I conclude.

End of C. delivers goods to B. as security for a debt, already due from A to C; C becomes fanner, with a qualified security. It's clear that A cannot countermote the delivery. 1 Bac. 220, 2 Bac. 30. 1 Yor. 104. It was formerly held, contra. 1 Bac. 139. 49. *It is not the rule, in this case supposed, founded on an agreement between A, B, & C, that the delivery should be to B. It seems 20. Bull. 35. (Bulst. 55. Esp. 570.)

Formerly doubted, whether, if no day of payment were fixed; payment or tender, would vest the property at law, unless it were made during the joint lives of the parties. But it has been held, since the holder that farmer may thus redeem, at any time, during his own life; provided (it is said) farmer does not call on him to redeem sooner. (2 Caines. Ca. in E. 205. Yor. 179. a c. 5. Vide. 13 5. 144. man.) (Yor. & Co. Contra); even after farmer's death. 1 Bac. 233. 4 Cor. 293. Ca. 184. 5 Yor. 178. 1 Bulst. 29. 2 Co. 79. Vide. 2. 2. 434. 1 Yor. 278. Oter Contra. It is not the rule, now, that payment or tender, must, on receipt of title, be made within a year & a day? (43, 39)

And if farmer, before his death, delivers the pledge to I. & I. without consideration, tender is to be made to farmer's executor, not to I. & I. And if, after such tender, I. refuses to redeem, he is
But if farmer, in the last case, (the farmer being living) had delivered it to d. f. in consideration; the question, to whom the tender must be made, is the same, as whether parents are assignable before the day of payment. (§ 39-42) It is to be made to farmer's executor, according to Yere 178. sec 4. Com. 253.

Secs. according to Bulst. 29. Sent. — If the assignment is a breach of trust, what need is there of a tender to anyone, for the purpose of investing farmer's title?}

But, there being no time fixed, (it is said), the farm, it is said, in the older books, must be redeemed, (i.e. payment, a tender, made) during farmer's life, if at all. This executor cannot claim a redemption at law. (§ 29. Yere 179. in p. contra.) 1 Bae. 29. Bulst. 29. Yere 178. 4. Com. 255. Yere 425. — As not a year or a day the time, now established, for redemption at law?

It is supposed, however, that equity, without undue delay, after forfeiture at law, 1 Bae. 29. note. — This seems reasonable: For when a day is fixed by the parties, it past, there is an equity of redemption. 1 Bae. 29. 2 Term. 691. 698.

If a day is fixed for payment, the farmer's interest is not forfeited, by his death, before the day. The executor may redeem by paying, or tendering, 1 Bae. 29. if no day is appointed by the parties. The law, in such cases, fixes the time 1 Bae. 39. 4. Com. 259. 1 Bae. 29. 4. Bulst. 29. — As he might have done, if living.

If executor pays at the day, the absolute property is vested; if
V. A delivery of goods to be carried, or for some other act to be done about them, by bailee, for reward. (3d, 10.) 2d. Ray. 913. 917. 1 Bac. 343. 1274. 144. 4. Bull. 72. 180. 2. 253.

This delivery may be to a private carrier, or other private person, or, to one who exercises a public employment. (2d. Ray. 917-18) as a common carrier, innkeeper, &c. 1232. 4.

1. Of delivery to a private carrier &c. (i.e. to any person not exercising a public employment) — This includes a delivery to one in a private professional character, as a tailor, or other mechanic, as also a bailiff, factor, &c. as well as to a special carrier. 2d. Ray. 918. 919. 1285-9. 50. 8. To an existing farmer. 129.

Here, the bailment, being reciprocally advantageous, the bailee is, on principle, bound only to ordinary care, and liable for ordinary neglect only. 114. 40. 916. 1285. 31. 133-4. 138. 1 Rob. 4. 63. 10. 543.

And so of the law settled. 12d. Ray. 918. 1 Comm. 254. [If he uses "reasonable care": he shall not be answerable: by Note, 2d. Ray. 918.] 12d. 487. 1 Com. 121.

If goods are delivered to such private person, to carry, or to be robbed, he is, according to the general rule, excused (c.f. prima facie) the force being irresistible by him. 129. 30. 138. West. 2 Int. 58.
(45) So, of a tailor, or a grantee farmer depasturing cattle, a fact, &c. Co. L. 8n. 6. Ray. 918. Decr. 131. 4 Cas. 84 a. No. 452.

3.27-8. In case of theft, merely, if the property was locked up with "reasonable care," the bailee is excused; otherwise, he is not. 1 Vent. 121. 6. Bay. 918. 2 Sten. 5. 1 Poth. 4. Mo. 375.

If the thing bailed is distinguished by bailee's hand, as, for rent, &c. 2 Cm. 1455, 12 Bl. 3, the bailee, according to 3.17. Jones, is liable; for this is, at least, ordinary neglect. 1 Vent. 121, 3 Bl. 8.

(4.4) This rule is common to every bailee who receives compensation of any kind for keeping or doing, as a carrier, a tailor, &c. (Gen. 141-2), generally, where the contract is reciprocally advantageous.

195. According to Jones, if timber is delivered to a weaver, smith, &c. into an oven, &c., he is not a bailee. He may, therefore, use it for another person, &c. on an equal quantity of the same quality. 1 Ven. 89, 143. The contract is no bailement, but a mutation. (p.9) The property vests absolutely in him; & he bears the loss (if it is lost) at all events.

The reason, on which Jones's opinion is founded, seeming to be, that the form of the property is, by the terms of the contract, to be altered by fusion, that it cannot be identified. Therefore, it cannot be specifically restored, in legal contemplation. And, of course, cannot have been intended to be so restored. And if so, the delivery cannot be a bailment. It is somewhat like the case of manufacturing flour into bread, grapes into wine, &c. 2 Cath. 40a, Mo. 86. 1 St. 33.
Baillment.

It seems difficult to deny the plausibility of this artificial view of the case: I ask, whether the law so considers it? (Vol. 305)

The case, I think, is not exactly similar to a contract of mere personal service. In the latter case, the same specific thing is never, by the terms of the contract, to be restored in any form. Would not the true rule be this: If the thing lost has not been used for another purpose, it can be proved to be the same as was delivered, the loss is to be borne by bailee, a employer, unless the same is guilty of neglect of its diligence. The bailee, if guilty of such neglect, or if the metal lost could be identified, by proof.

When the baillment is to a person to do some act of skill, in 317. This professional character, for hire, the law implies a special contract, not only to redeliver the thing, but to do the work skillfully. 12 Ed. 137, 100; 15 H. 137. 142 to a tailor, or other mechanic, 11 Co. 54a; 3 Bl. 185-5; 1 Staun. 324; 3 Bl. 501.

But if the act to be done, is not in the line of business, professional, or common business, the law implies no engagement on his part, that the act shall be skillfully done. He cannot be made liable for not using skill, without an express agreement, 3 Bl. 185; Exp. 3461. 10 H. 138-40. 11 H. 148.

(But of this under title "Baillment on the case" (p. 77)

Ordinary care does not oblige bailee to insure the thing aft. 5.

fie. deaut. 3142. Usage might vary the rule I presume.
Pactment.

If goods delivered to a bailee of this 3rd kind, are lost or destroyed, (while the work or act to be done remains unfinished), by a neglect of that degree of care, which the law requires of him; is he entitled to wages for what he has done? Sent not. (S.Burr. 1292-7); for the bailee receives no benefit from his work. Esp. 85.

2. Of delivery to a person exercising a public employment in the way of his professional business; as common carriers, innkeepers, &c. 2 Ray. 918. 1 S. & T. 132-4.

(52.) First, of common carriers: A common carrier, it seems, &c. as person in general, who makes it his business to carry the goods of others, for hire. &c. A common wagerer; a common porter; a common hoyman; a common fiyman, when paid for carrying goods; a master of a ship &c. 2 Ray. 918. 93. 80-1. 3 S. & T. 132-3. 17 R. 247. 220. 1 Co. 212. 1 Ad. 12. Esp. 174. 254. Wats. 81-2.

It seeming to have been formerly doubted, whether any other than a carrier by land, fell within the description of a common carrier. The law, regarding common carriers, may first extended to common hoyman; in the 11th of Geo. I. 1 S. & T. 132. 17-8. Co. 330. 12. Hurd. 467.

(53.) First extended to masters of ships in the 25 Car. II. 1 S. & T. 918. 220. 1790. 238. 2 Edn. 9. "Insurance 30"

So, the owners of ships employed in carrying goods for others, are common carriers; & the action may be brought (on nature of an action agt. a common carrier), agt. either the master, or owner. Esp. 623. 440. 19 R. 78. 18. 1 Co. 212. 3 Edn. 237. 13 S. & T. 29. 106. 62.
Bailment.

But by Stat. 7 Geo. III, the owner is liable only to the value of the ship & freight, where the loss is occasioned by the misconduct of the master or mariners. 19 R. 11. 75. So by 35 Geo. III. c. 85, where it is occasioned by strangers. Marsham Ins. 105. (See "Insurance," 32.)

If a common carrier, having conveniences to carry, & being for fixed his hire, refuses to carry, he is liable to an action. 11 Bev. 344. 3 H. 160-2. Bull. 70. 2 Thom. 327. 3 St. 100. Har. 2163.

But a common carrier may make a special, i.e., conditional, acceptance; i.e., that he will not be answerable for money unless he has notice, & is paid in proportion to the amount or value. Esp. 022. 4 Bu. 3398. He may, therefore, refuse to carry except upon such condition.

The bailment, in the case of a com. carrier, being reciprocally advantageous, he would (if there were no special to replenish the application of the general principle), be liable for ordinary neglect only. 1n. 1144. And this seeming to have been the rule, at least in the reign of Eliz. VIII, when it was held, that a com. carrier was not liable in case of rotting, unless (as in the case of lending for hire, only), his own imprudence gave occasion to it. 1n. 1144.

But it was settled in the reign of Eliz., that rotting was not in practice. 1n. 144-5. Co. L. c. 84, a. Mo. 402. 1 Rob. 2. 4 Ed. 84, a. 1 Bar. 1. 345.

And the rule now is, that he is liable for losses occasioned in any way, except by the act of God, of the public enemies, or of the tailor. Bull. 70-1. 3 Eliz. 916. 3 Bom. 1193. An. 125. 1 East.
The true foundation of this rule is public policy, which requires an exception to the general principle. But carriers should combine with restorers, to the infinite injury of commerce.


In this reason would extend to the case of a private carrier.

30. He is not liable, indeed, to this extent, unless he carries for reward. Because, if he carries gratuitously, he does not act as a common carrier. E. S. 621. 1 B. R., 345.

And if so, he is not liable as a common carrier. E. S. 621. 1 B. R., 345.

But to say that he incurs this high degree of responsibility, because of his reward, is equivalent to saying that he incurs it because he is a common carrier— which would be no reason at all.

A common carrier, then, is in nature of an insurer at all events except the acts of God. By the act of God, is meant according to L. Mansfield, "such an act, as cannot happen by the intervention of man." 2 C. R. 34. E. S. 621. 1 B. R., 345.

Fire, occasioned otherwise than by lightning, is not the act of God. 2 C. R. 34. 1 B. R., 345. E. S. 621.

Rats, gnawing a hole through the ship is no excuse. 2 C. R. 34. E. S. 621.

Jones says (141-2) that "letting the rats gnaw the cargo is ordinary negligence." E. S.
Preliment—

Not excused by the act of "rebels": for they are not "enemies," within the rule; but "sinners" are. 1 Vent. 329. "Freshwater fishermen" are not, (i.e.) mere barnstormers. 1 S. B. 18. Esp. 620. 1 Vent. 190. 1 Nov. 85.

If a tempest makes it necessary to throw a vessel's goods overboard, the carrier is excused. 12 Co. 63. 10 Bac. 345. For the necessity of doing it is imposed by the act of God. Ion. 187. Esp. 620. 1 Rod. B. 79. 2 Bulst. 280. 2 Rod. 567.

(In one case, where a box of jewels was thrown over, the master was excused. 44 Hil. 193. Ion. 187. — Probably the box was light, & there was no necessity.)


But if a common carrier voluntarily or unnecessarily exposes the property to danger, from the act of God, the act of God shall not excuse him. Esp. 620. Ex. If a common carrier had voluntarily put the cargo in very tempestuous weather, when a loss was probable. Ion. 128. 1 Con. R. 287.

Excused, if the loss is occasioned by bailor's act, or default. Ex. If a bottle of wine bursts, while in carriage, from being in a state of fermentation. Bull. 74. 69. Esp. 621.
Bailment.

(59.) So, if the carrier's maggot is full, the owner forges the goods upon him; it is his own folly, if they are lost. 2 Thorr. 127. 1 Buc. 344. (Post, Annals. 1. 1.)

But in order to charge the carrier, as above, the goods must have been lost, while in his ship, or under his immediate care and control, Exp. 621. Ex. If the owner sends his servant on a voyage, to take care of the goods, and he takes charge of them, if they are stolen, the carrier is not liable for the loss, i.e. I suppose, not liable as a com. carrier (Exp. 621. Bull. 70. 2 Thorr. 327. Astr. 696. 1 Buc. 344), for they are not considered as in the carrier's keep. scenic, if they are delivered to the carrier, but a passenger is requested to take care of them (1 Buc. 344. 1 Rec. 2. Ex. Ex. 338. Hrb. 3.) The carrier then has the control of them.

(60.) It seems that a com. carrier, the ignorance of the contents of a bag, is liable for them, in case of loss, unless he discharges himself by sp. 16. a special, i.e. a qualified acceptance. Bull. 70. 2 East. 126. Can. 329. 145. 1 Buc. 345. Hunt. 185. This seems to be correct, on principle, that I have questioned the rule, in the case of a depositary. For the liability of a com. carrier does not depend upon the question whether he has been careful or negligent.

So, according to two decided cases, this the carrier is misprised of the contents by the owner; she is liable, unless he accepts specially. All. 93. Bull. 70. Ex. Where the box contained a large sum of money, or the carrier was told by the owner, that it contained 'such goods of mean value,' the carrier, being not
Bailment.

mag holder liable. cit't 12 T. 238. 1 Com. 213. 1 Brev. 245.

So, where a box containing $100 in money, was said by the owner to contain a book & tobacco, the carrier may hold liable, because there was no special acceptance. But Rolt, J., said, that injury may arise, where money might be given. 114 G. & S. 135. 54 T. 730.

Both of these decisions are disapproved of by P. Mansfield, the rest of C. P. [4 Com. 238 & 240] on the ground that the flaw ought to reside, 1 East, 610. 2 C. & C. 145. per L. King. So, 17 Jones (148) who considers these two cases in M. J. 60, overruled.

In the purpose of making a special acceptance, it is not necessary that there be personal communication between the owner & carrier. And advertisement in the public papers may be sufficient; i.e. the jury may infer from it, that the owner had knowledge of the carrier's terms. Bull. 71. 4 Com. 229 & 230. Cap. 622. Caith. 485. 1 Nutt. 29 & 800. 57. R. 531.

Under a general acceptance (except in cases of fraud, etc.) he is liable for all that he receives. But if he accepts specially, he is liable for as much only, as he undertakes to carry [Cap. 621. & author & Sug.]; i.e. as com. carrier, he is chargeable for as much only, as his warrant extends to; as to anything more, he acts, indeed, not as com. carrier. But, when, under a special acceptance, a bag containing $400 in money was delivered, being told by the owner that there was but $200, it paid for no more, he may hold liable, for no more. Caith. 485. Cap. 621. Bull. 70-1. 1 Nutt. 29 & 800, where the owner, having con- (63) (62) ceased the value, carrier may hold liable at all. But three,
Bailment.

The carrier had published by advertisement, that he would not be answerable at all, for certain valuables, over the value of $5, except on certain conditions, which conditions plaintiff refused, but did not comply with. See also: Esp. 622; 4 East, 371. 5th. 34. 554.

The master of a stage coach, who receives hire for passengers only, not for baggage, is not liable for the loss of the latter. 1 Bla. 343. Com. R. 26. 1812. Bull. 70. Esp. 622. 52 U.S. vid. 2 East, 49. Seager, if he carries goods for hire. 1 Bla. 344. n. 2 Thor. 12. 8. 2 Bla. 282. The owner riding in the same coach, does not absolve the master of the coach. 2 East, 419. ca. cited.

(4) Does not the hire of our stage coach extend to the baggage, allowed to passengers? I.e. is not the carriage of a passenger's baggage the part consideration of another paid for contract -wise, the contract to pay for the conveyance of the person of the owner? Is not his conveyance care of the baggage, warranted by this latter contract?)

(54.) A com. carrier is liable, without an express promise, by the owner to pay the hire; since the former may recover on a quantum meruit. 1 Bla. 343.

So change the carrier, it is not necessary that the goods be lost in transit. If they are lost at the inn, where he arrives, he is liable. (Or, 57. a.m.t.) He is clearly liable in this case, if the custom, or course of business, is for the carrier to deliver to consignee. 2 Bl. R. 210. B. Tr. 629. 429.

And he seems to be liable, of course, till the delivery to consignee, unless the established custom is not to deliver there. 1 Bla.
The custom of not to deliver to consignee, but to keep, he is not liable, as common carrier, after they are deposited according to the custom; Esp. 522, 4 T. R. 531. See he may be liable, as a bailee of a different description.

Of the consignee of goods, directs what carrier the consignor shall send them; the consignor, not the consignee, must, regularly, bring the action. Corp. 226, 8 T. R. 330, Esp. 579, Bull. 33, 7 For. C. 311; 349, 353. Contracts, 110. For in such cases, the consignee is the bailor, & the consignor, in making the delivery, is his agent. The consignee, therefore, as between himself & the consignor, stands to the risk. Corp. 394.

Clean, if consignor elects his own carrier. So, if he makes himself liable by agreement for the price of the carriage, or takes the risk of the consignment; he may sue. 8 T. R. 183, 5 Term. 2010, 13. 638. The agreement makes him a principal; there being an express contract made with him.

But if one sends an order for goods to be sent by a carrier (meaning no one), & vendor delivers them to a com. carrier, in the usual route; they are at the risk of the vendor. Esp. 42, 3 Bos. 532. Such direction warrant the delivery as made; & the consignor acts as agent. For the order is, in effect, to deliver to any com. carrier.

When an action is brought ag. shippers, as com. carriers, then, must all, it is said, be joined; for the right of action arises quas contractio, not by statute. Esp. 523, 8 P Col. 44. "Pres. act 13."
But even when the suit is on contract, non-payment of all in pleading in abatement only. 5 Burr. 2211. 2814. 3 T.R. 597. 4 Dall. 248. 319. But the true rule is, that if they are sued on the contract, all must be joined. N. J. 474. 497. If the action sound in tort, as for negligence. 5 T.R. 849. 851. 3 East. 62. 70.

They are liable, because the master is their servant, if they receive freight. See 5 T.R. 851.

At com. law, a postmaster (not being an officer, appointed by law), was liable as a com. carrier for letting see. 1 M. & S. 53.

But since the establishment of a general post office by law & the suppression of private posts (ib. 1 M. & S. 52. 53) a postmaster has been held not to be a com. carrier. 1 M. & S. 57. 1 D. 249. 54. 2 H. & T. 154. 11 B. & C. 343. On he makes no contract with the party receiving no hire from him — & policy forbids his liability.

Not even liable for default in his servants. (Case in 3 Will. 248, was agt. deputy postmaster, for his own actual default. Corb. 103. 242.)

Com. carriers are said to be liable on the custom of the realm & the common mode of declaring has been to count upon & recite, the custom. 1 B. & C. 244. 6 H. & T. 235. 8 B. & C. 343. But this seems unnecessary. In the custom being general, is no other than a branch of the com. law. 1 B. & C. 343. 1 D. 150. 2 Dall. 18. 15. 33. 34. 227. (What such the mode of declaring at this time?)

When property is stolen from a com. carrier, or otherwise lost, or injured, so as to subject him (he being guilty of no actual misfeasance); the remedy agt. him is by a special action on the
Bailment

Case — not trespass. If he is guilty of a misfeasance, trespass lies.

Sal. 635. Exp. 595. Tit. 325. P. 145. 5 Brev. 257. 5 Sib. n. 347. Exp. 370. p. 35.

Ex. breaking ice — destroying goods

Not liable in trespass, even for actual negligence. Sal. 635.

Secondly, of Innkeeper (see 612, 6. ult.) A delivery to an innkeeper seems to fall, most properly, under this 2nd general head of the 5th class of bailment. A bailment of this description, being a delivery of goods to a person, exercising a public employment, in his public professional character, for some act to be done about them, or care bestowed upon them, for reward. Jon. 130-2.

*6. 10. 148.

("Any person, who makes it his business, to entertain, lodge, & provide necessaries for, travelling, & their horses &c., for reward, is a p. 129 common innkeeper. 3 Brev. 179. 3 Sed. 374. 2 Sel. R. 345. 

In Cont. appointed by officers of the law. St. C. 408.)"

Exp. (528-9) classes it under "commodatation," a lending gratis. But (59.) there is not the least resemblance between the two cases. Lending gratis is to a private person (i.e. a person in his private capacity) p. 18.

for use &c., for his sole benefit. — Bull. in his T. P. 73. treats of it under the 5th kind — i.e., a delivery of goods for bailee to carry, or to do some act about them, gratis. — Bent. 1. The delivery in this last case, is always to a person as a private individual; i.e., as bailee, he is not a public character.

2. In case of horses &c., kept at an inn, the host to care &c., is clearly, not gratis; nor indeed, is the case of inanimate goods; for in the latter case, his care is remedied by another gainful contract, viz, that, in which he is bound to entertain the owner.

Jon. 132. 134.
Indeed, the price paid for an apartment may be considered as extending to the care of the baggage, or in part, as storage for it.

The general law as to innkeepers post page 128, et al. Here present only a few general rules, as to their liability for goods of guests, when lost or injured; i.e., I treat of them under this title only so far, as they are bailors.

The bailment being reciprocally advantageous, the innkeeper wants, according to the general principle, be liable for ordinary neglect only. 133-4. 135 et seq. But the policy of the law has extended his liability somewhat further; not so far, however, as in the case of common carrier, it seems. 133-4. 135 et al.

In any case, does not policy require the same responsibility as that of a common carrier? [152, a.m.]

He is clearly liable for any losses occasioned by his servants, in any way. For he is bound, at all events, to forbid negligent and careless servants. 134-5. Chap. 52. C. 32-3. Bull. 73. 1 Bl. 430.

So, if the goods of a guest are stolen by a stranger, the host, according to the general rule, is liable. 134. Co. 32. 5 Co. 33. a. Co. 31. 89. Whether he has been negligent, or not. 11. R. 270 et al.

Here, the general rule requires more than ordinary care. It requires it.

Rather, when the goods are stolen by the servant, a companion of the guest; Chap. 52. Co. 32. 85. 8 Co. 33. a. 9 B. & C. 187; or by anyone who lodges with him, by his request, 1 Comm. 211. 8 Co. 33. a. 3 B. & C. 182.
Pardon.

So, I conclude, he is liable, in case of common robbery, on the same principle of Ionic. Cent. 8Co. 32. 6. In. 135 a. b. Flor. 9.
3Bou. 182.

In Flor. 9 it is said that if the inn is broken, or goods taken, by the "enemies," the host is excused; which seems to imply that other human forces are not excused.

But I do not find a rigorous rule expressly laid down in any of the authorities. In (135 b) it asserts it, as law, that a force, truly irresistible, does excuse him. And Flor. in assigning the reason of the host being excused in the case, which he tells, says, "So, in reason, such violence cannot be resisted." I conclude that Flor's rule is law. 

Oft, a loss occasioned by the act of a master might not subject him.

I do not find any rule subjecting the host to the same extent, which common carriers are liable. Therefore, 6 Co. man 1 (By the Co.

But, he not on principle to be liable to the same extent? 6 Bou. a. m. 1.

In 8 Co. 33 a. (cit. 1 Con. 341. 229. Exp. 526-7) it is holden that an inn.

keeper is not liable, unless there be a "default in him, or his servants." Deny by Bull. 1 (5 FR. 275) it said that it is "not necessary to prove negligence." This is the true rule.

He is liable, as an innkeeper, for such goods only, as are in his hospitium. But the hospitium includes stables + offices. 8 Co. 
32 b. Exp. 526-7. 14 Iohn. 175.

When they are moved out of the inn, by the guests' directions, he is 127. not liable. (8 Co. 32 b. 10 Ed. 4. 1 Con. 210. Bull. 93 Exp. 627) unless lost by his actual default. Ee. guest orders his horse to be sent to passe, & he is stolen. But if the host does it, without such direction.
Bailment.

(24.) In the rest of the law as to睡keeper, see tit. "Send" p. 12.1

2.12.32.30. In bailments of the 3rd. kind of damage is done by bailee negligence, bailor may declare in account for the agreement, as in land. Sem. 3 East. 62. 1 Wils. 282. 2 Wils. 319.


Distinction between this and deposit: One lies in custody, the other in securance. Dom. 73.

(25.) This contract is for the benefit of bailee only; therefore, according to the general principle, bailee is liable, under a general acceptance, to no other than gross neglect, i.e. violation of good faith. Dom. 74.

And 25. clearly is the general rule established by the authorities. 1 Bov. C. 285. 1 Chitty. 155. 16-2. 2 D. Ray. 909. 919.

But where there is an express engagement by bailee to use all necessary care or skill, or any other given degree, if a loss happens by his neglect, either to use it, he is liable. Dom. 75. 1 Bov. C. 285. 2 D. Ray. 909.

And such an engagement to use all necessary care or skill, may be implied in certain cases. Dom. 76. 1 Nott. 107-8.
Such an undertaking, then, it would seem may subject him for less than gross negligence. 13 M. & W. 253, 310. But according to the case in 17 H. 6 (1591) or rather the agreement of the court, when the engagement is to do an act skilfully, or where a general undertaking implies that the act shall be done skilfully, the omission of the necessary skill is gross negligence. 1 H. 6. 161. So, according to Holt (2 Q. B. 280) it is a deceit, a fraud, a breach of trust.

The breach of the engagement being in all cases, to course, gross neglect. 1 T. 2. In this case, there is no distinction between different degrees of care & neglect. (254-5) Indeed, according to this mode of reasoning, the omission, in an bailee, of the degree of care, expressly or impliedly stipulated, is gross neglect, and of course, the neglect which subjects a bailee is always gross.

But such a doctrine would reduce all bailees, so far as regards care & neglect, to a level; it would be to arraign the symmetry, & indeed, the fundamental principles of the whole system. It might as well be said, that a common carrier, from whom goods are taken by a man, however large, is liable on the ground of gross neglect.

But such an engagement is not implied, unless the act to be done, is in the habit of bailees professional occupation. 3 H. 68-95. 12 H. 68, 69. 4 W. 139-140. 11 Co. 54 a. 12 Pau. 524. 6 T. 618. J. Tho. Trench, in Cooper vs Barnard, intimates, that the special argument, to carry “safety” as what subject to the defence 2 Q. B. 291. Of Jones, however, contends, that the nature of the tralment implied the same undertaking. 2 S. 84-5. new edition, 70. Sect. 86.
Bailment.

Persons, however, [173-4. rev. 61. 30. 72] makes a distinction between the duty of a bailee, when it lies in possession (i.e. in 7.79. performance made) and when in custody or in carrying only. In the former case, he holds greater diligence is required than in the latter. The implied engagement being "to use a degree of diligence so adequate to the performance of the undertaking." (This passage is contrary to 174. 175. 183. 185. 187. 189.) As I think, to principle also. It would extend the liability of 3.50. a mandatory beyond that of a private bailee of the 3rd class.

(18.) When there is no engagement, express or implied, to use skill or care, than the bailee takes of his own goods, the bailee is liable for gross neglect only. 174. 175. 183. 185. Ex. A merchant employs gratis, to enter 60 goods with his own, at the custom house; but enters them, with his own, under a wrong denomination, and they are seized. He is not liable. 174. 175.

(19.) Secund. If a bailee should engage to make a garment, gratis. Here, the undertaking implies that all necessary skill and care, in making it, shall be used.

This agrees that a bailment to carry gratis does not imply an agreement by mandatory to use all necessary care, so that he is liable for gross neglect only. 174. 175. 183. 185. 187. Sec. as to any distinction between doing and carrying.

(20.) The engagement thing implied by law, (when the act to be done is in the line of bailor's occupation — 7.77.) extends, however, it seems, only to the possession, or doing of the act stipulated. It does not provide all accidents from foreign causes.
Both not connected with the performance of the act. Ex. In case of the bailee, who is to make gratia (law) the implied undertaking to use all necessary care so does not subject him for losses from robbery, etc. So far as relates to such accidents, there is no implied agreement to use all necessary care, & bailee is liable for gross neglect only. See 3d Ray. 918. Case supposed of a drunken man's piercing the earth, etc.

19d. 283. Bull. 73

But bailee may bind himself to be answerable for casual (81)

ties. Sor. 75. 2d Ray. 918.

But his express promise to carry safely, does not make him answerable for losses occasioned by the act of God, or casualties. Sor. 1d. 2d Ray. 918. It binds him only to necessary care, in carrying, or executing his trust. Does it subject, except for some degree of neglect? 2d Ray. 918.

Sor. 62. (p. 1017) sent. not.

And he cannot, by even a special agreement, exempt himself from liability for fraud. Such an agreement is contra bonos mores. Sor. 65. 75.

So: it seems, from the language of some of the books, that: p. 78. 15.

when any degree of care be, by expressly or implicitly stipulated, the omission of it is gross neglect, & that the bailee of this class, is liable only on that ground, not on his contract. But the authorities are equally clear, that, on delivery of the thing the engagement binds, as a contract; but not before delivery.

(2d Ray. 919-10. 99-20): And that bailee is liable, as for breach of contract. P. 1. 143. Case of promise to build a house (82.)

gratia (p. 15) - "Delivery" "entering on the trust" is a good consideration. Action on the case of March. 2d. 287. 1st Co. over.
Bailment.

Case v. Co. 1, 59-8, says thing:—A delivered money to B on a promise by B to deliver it to C. No other consideration than the first delivery. A failed to deliver it over. A brought a suit ag. B on the express promise, & recovered. (Clev. 126, cont. an older case). In this case, if the original contract had not been binding, as a contract, A could not have recovered on the express promise. 1st. Clev. 920.

(53) Where special damage has been sustained by a party not taking the goods or, according to agreement, action lies, according to Jones, the: the promise is gratuitous. 1st. 79 & 80. 1st. 57 & 140. 149; 1st. 57 & 148; 1st. 57 & 149. How can the action be maintained unless actual fraud appears? In the contract, while wholly executory, does not bind. Viz. 4th. John, 84, ag. the rule.

Jones says, also, that the ground of the action, in these last cases, is the special damage (1st. 19 & 80). But it arises from breach of contract; if the contract does not bind, how can there be a remedy for damages arising from the breach of it? And how any wrong, unless there is actual fraud? Ev. A expecting to go a voyage or journey, engages, gratuitously, to convey a letter or parcel for B; but by reason of some disapp. jointment, or some unexpected emergency of business, fails to go. & B sustains special damage. Upon what principle of law can B be subjected? But at any rate, special damage is not necessary, when the thing has been delivered.

Prelament.

2. Ray. 909. 910. 919-920. cases cited Ton. 76-85.

If goods are actually delivered to a mandantary, to cărry on, the (84)
fails to carry on, action lies for the failure, on the agreement,
the there is no special damage; a fortiori, if there is special
damage.

Said that negligence, not the assumption, is the cause of action
3 East, 50. Ex. Where he expressly undertakes to assume all
risks (p. 138 81). But if the promise, as such, does not bind, how
is there any duty created, of which neglect is predicable?

Further rules applying to different kinds of bailment.

1. As to bailor's lien, it right to detain. - A lien, property
so called, exists in bailor's favour, I apprehend, only in the 4-
8th kinds of bailment: it being a direct claim to, in incum-
brance upon, some specific property of another, in name of se-
curity for a debt or duty, if accompanied with paying of the
property. East, 4.

In the 4th kind (as farming), a lien is created by the delivery
itself, or by the terms of the contract - without anything ex-
press fact: a farmer has a right to detain, till the debt is
paid. 4 Com. 25. 54 4. 4 Delr. 178. 553. 52. 543.

Most bailors of the 5th kind (i.e. where there is a delivery of goods
to be carried on, for a reward to bailor) have a lien, by a condition
Salve

In all, till they are paid (3 Bacc. 165, Holt 142), but some have not. See "Master + Servant" 28.

(20) But a third person, who obtains the goods wrongfully from bailee, cannot avail himself of this lien, and in such case bailee may recover of the former, without tendering to bailee. 3 East 555; 2 T.R. 413; 1 Camp 415.

A commodious carriage, in case of a lien, i.e. a right to detain, till paid. 2 Bacc. 752, 807; 5 Barn. 2716; 2 Wils. 207; 3 Bacc. 205, 207; 2 T.R. 26.

So, in Holt, if goods are stolen, or delivered to the thief, to a commodious carriage, he may detain them, and even the other, till paid. So he was obliged to carry them. 2 Bacc. 807; 2 T.R. 591.

In an innkeeper has also a right to detain the house of his guest, till paid; the expense occasioned by the house. 3 Bacc. 205; 3 Bacc. 810; 2 Esp. 574; Chitty 145; 3 Bullet. 258; 2 Sel. 122; 149; 1 Sel. 188; 2 Thom. 207; 3 Co. 147; 1 Bacc. 185.

(37) So, when at the inn by a stranger, as in the case of a commodious carriage (p. 30) and for the same reason. 3 Bacc. 165. 2 T.R. 85; 2 T.R. 128; 170; 2 Esp. 574.

So, he may detain the person of his guest till his whole bill is paid. But the house cannot be detained for the expense of entertaining the guest. 3 Bacc. 185; 2 T.R. 85.
Bailment—

Sec. 59. In equity, by voluntarily letting the house go out of his power, 56.
      114. 125. The rule that personal chattels cannot exist without actual "possession": (this rule holds of all leases on personal chattels). And here the lease is abandoned. 1 Bom. 793-4. 1 Bost. 4. (ante, 35)

So, a tailor, or other mechanic, has a lien upon the materials, which he has bought. [1 Bac. 240. 8 Co. 147. a. 45. 42. 97.]

Here the "condition is answered" by the law, in behalf of trade or commerce. So the tailor is not bound to receive the cloth. But where the tailor is in the habit of trusting an employer, he ought not to detain, without previous notice; for he is often presumed to have acted on the personal credit of the tailor. 1 Bac. 240. 2. Dem.

An aggrieved farmer cannot detain the cattle for his pay, he is not obliged to receive; it is said, does not require that he should have a lien. 5 S. 116. 245. Bull. 43. Co. An. 197.

So, Captain of a ship has no lien upon her for his wages, stock, or freight. 3 Bouc. 114. 14. 12. 12. 12. 532. 578. 12. 54. 1. 533. 40. He trusts to the personal credit of the owners.

But the mariners have a lien. 116. 439. So 97. Bouc. 110. 12. They are employed to contract on the credit of the ship.

But where there is a special agreement on which the tailor relies, he cannot detain. Bjur. 94. 12. 12. 12.
Bailment

The right of lien, as between factor and principal, is to be deemed
waived, when the party enters into a special agreement, inde-  
sistent with the existence of the lien, or from which a waiver
of it may fairly be inferred. E.g. When he gives credit, by ex-
tending the time of payment, or takes distinct and independent
security for the payment; or where the factor makes an expi-
ery stipulation, on receiving the goods, to pay over the
proceeds. Mason, 191, 10 Ves. 278. See also, 1 Dalr. 67, note c.  
(Mobile's Est.) 8 T.R. 258.

(82.) And it has been held, in the case of a factor, that a spec-
ial agreement to pay a sum certain (without more) would vest
the right of detainee. 1 Esp. 385; 5 Ta., 224. 5 Bde. 271. 1 Dalr. 66, 2
Ed., 92. In no where there is an express agreement the law
does not imply one. 1 Esp. 385. --- The law of the case of the free-
ner, if seeming not to be law. See 2 Hagg. Ed. of Fern.
1071, where it is said, the right of detainee is not waived, mere-
ly as an express agreement for the payment of a fixed sum; for
which is cited, Chase v. Westmore, 2 R. 91. 10 R. 89. Geo. III. [When
the cases contra are overruled], & for which also, is cited the
opinion of Bills, Ch. J. in Hutton v. Bragg, 2 March. 345, 349.

Peter v. So, a factor may have a lien on the goods in his actual
possession. 3 T.R.
+ 38. But he cannot follow them. 5 T.R. 664. 1st, 1178. 1st, 1184. 362.  
Comp. 1st, 1184.

7. 57. Lien lost by giving up possession to the owner. 4 Com. 225. 10 Bn.
493-4. 1 East. 4.

Bailment.
A bailee of the 2nd kind (i.e. a bonower, or hiree) has a right (20) to keep the property for the time stipulated, even agt. bailor. 1 B. 2. 3 cases, 172. 1 Bl. 35. 128. 84. A house hired to a journeyman. But this is not properly a lien, this is a special property, not a right to retain by way of security for a debt.

Lessees and mandataries can have no lien for they have no debt, or claim, agt. bailor.

Rights of strangers, how far affected by Bailment.
If one bails, as his own, the property of another, the bailee, it is said, must redeem the property to the bailor, according to the terms of the contract: For the bailee cannot judge between the owner's bailor, but ought to perform his contract. 1 B. 2. 87. 7. 50. 1 Bl. 58. 87. 50. B. 15. 1 B. 2. 347. "100 years 89."

But see whether this rule means anything more than that the bailee will be justified in delivering back to bailor, or will be discharged, by this act, of the owner's claim? For the reason given for the rule, requires nothing more. It is intended not to confer a right upon the wrongful bailee, but merely for the protection of the honest bailee.

And it is laid down afterward in 1 B. 347 that if bailee redeeming the property to bailor, before or pending an action at
him by the owner; this will bar the owner's action. 1 B. 342. 87. 137. 128. This rule implies that if the property is not thus "soon
redeemed, the owner may recover. 87. 128. 87. 35. If bailee has before refused to deliver to the owner, or demands? If he not from
that moment guilty of a conversion? 7. 105.)"
Bailment.

In 2 & 3. Eliz. 58 (cited ante, 88), where the owner brings action agst. con. charger for goods stolen, & delivered to him by the thief, holds that he might retain agst. the owner "for the carriage," i.e. till paid. (See C. 399. Inst. 33. Ante, 88. Post, 1105; which implies a right to redeem to the owner, & a right, in the latter, to claim a re-delivery, or payment of the fare.

If the bailee, in a case of this kind, dies, his executor comes into title of the property, the executor, it is said, must deliver to the owner, not to bailee. For having gained for by law, he must deliver to him, who in law, is the owner. (C. 337. Inst. 1141.)

Executor not being bound to testator's personal trusts. (Whether the distinction be real or artificial? Why may not the executor discharge himself as the testator might?)

If to the rights of bailee's creditors, or who lives on the property, agst. his; & of purchasers under him.

At Inst. 26. i.e. if a person bankrupt, has in his "floor," edes, disposition, goods of another, by latter's consent, they are liable for bankrupt's debts. C. 307. 1408. 1409. 1306. 23. S. 18. 13. 82. 1793. 343. 47. R. 228. Inst. 130. — C. 8. Goods are sold, but left in vendor's floor; he becoming bankrupt, or bailee, to one becoming so. In this case, the vendor is, as between himself & vendee, the latter's bailee.

This stat. relates to floor, etc. by persons becoming bankrupt only. 12. R. 676.

This stat. extends as well to goods, not originally belonging to the bankrupt, but bailee to him, or permitted by the owner to be in his floor, as to such, as more originally his, & have been sold by him, without a transfer of the floor. C. 232. 1803. 32. C. 345. 569.
Bailment.

As to goods originally belonging to bankrupt, &c. in his aid, before
bankruptcy, but permitted to remain in his shop, the rule
was ags. perhaps, in favour of his creditors, before this stat.
as now: 1 F & F, 1762, 1 Ch. Com. Lann., the sale (it is said)
would have been fraudulent, as ag. the creditors of the bankrupt;
Comp. 233, 3 Co. 81. 2 T. R. 587, 595. 7 T. R. 71. [1] See que. Whether the
shop is anything more than a badge of fraud. See "Fraud.
Consept. 79. 3 Conn. R. 451."

The creditors of the bankrupt bailee, are allowed in the stat. 21.
1618. to come upon the goods in his shop, not strict. on the
ground of fraud between bailee & bailee; but in reason of the false
credit, derived from the shop. Ex. p. 398. 1711. 663. &c. 583. 370. 372.
Shop of personal chattels, being presumptive evidence of owner-
ship; which, in cases within this stat., cannot be rebutted.

Rebutting any presumption of actual fraud, is, therefore, of no avail. (94)
to bailee. Ponder this stat. 1 Act. 180, 183. 1 T. R. 395.

The stat. seems to be founded upon, &c. in affirmance of, the general
principle of the com. law, that when one of two innocent persons
must suffer by the act of a third, he who enabled the third person
to occasion the loss, must bear it, rather than the other. 2 T. R. 70.

The stat. extends not to goods, disposed by the bankrupt on notice
direct: Ex. as executrix, a guardian, or as husband, in case of
wife's separate property. 1 T. R. 392. 242. 1 Act. 1379, 393. 7.
Tiss. 157, 1. 3 T. R. 615. Their loss cannot be prevented by the parties
who have the beneficial interest.
Barclay

It extends, however, as need to mortgages of goods, as to absolute sale, when the vendor is left in "possession," or becomes bankrupt.

Rob. 549, 557. 1 Atk. 165. 1 Teg. 348. 1 Teg. 538. 19th. 221. Exp. 856. 18th. 183. 190. 2d. 1 Ves. 244. 1 Ves. 256. Scaring as to mortgages of land. In this case, is no evidence of title. It can be ascertained by the title deeds.

(93)

Suppose the condition to be precedent to the vendor's right of sale.

Will it be within the statute? An hon. thinks not. Rob. 557. 2 Y. R. 594. v. On the purchaser does not voluntarily continue to vend, property of which he has the right of sale. 1 Ves. 365, 368.

This statute does not extend to the sale of a ship at sea &c. 14th. 15th. Atk. 549, 557. Exp. 856. 1 Ves. 372. 1 Ves. 368, 2d. 1 Ves. 462. 18th. 19th. 190. 2d. 1 Ves. 192. The immediate "possession" cannot be taken by vendor.

But the purchaser must take "possession" of the ship as soon as possible. Exp. 855. 1 Ves. 352. 2d. 1 Ves. 462. 3d. 1 Ves. 275. Manly & Col. 240. so she will be liable for vendor's debts, in case of his bankruptcy.

So, in many other cases, an actual delivery of the goods is not necessary, under special circumstances. Ex. Delivering the key of a store, containing the goods sold, is sufficient. 1 Ves. 71. 2 Ves. 935. Exp. 377.

(93)

The goods must be possessed by the bankrupt, as his own goods; or, in other words, the must, with the owner's consent, be left in his "possession," or disposition.
Fieldment

Sec. 2. If a lease, let or tenet to him for a journey, there is no sufficient evidence of ownership; it therefore is no false credit given.

Therefore, a temporary trust for a particular purpose, (as till an opportunity shews office of sending the goods to vendee), is not within the statute. Esq. 507. 1st. 188. 1 Sam. V. 5. 197. 250.

So, the bankrupt must appear, in all respects, to be the owner, to bring the case within the statute. For if, from the known nature of his business, the presumption of his ownership is excluded, the true owner shall hold. Esq. 570. 1st. 92. 137. 315. 3 F. N. 185. As in the case of factors, goldsmiths, who do not deal in their own goods. [Goldsmiths, i.e. private bankers]

In common cases of fieldment, (as where bailee is not in the "true disposition of the goods, it is not, of course, the owner—on where he does not become a bankrupt), the statute does not apply. The general rule is, in such cases, that the true owner, i.e. bailee, may recover at any creditor, who levies upon them, as being the bailee. So, also, agt. any person under bailee, or any subsequent purchaser, unless the sale was in market做过。So, agt. any person, with whose hands they may otherwise have fallen. However honestly he may have obtained them. Caveat emptor. Esq. 570. 1st. 92. 3 F. N. 117. 30th. 44. 1st. 285. 1st. 265. 285. 285. see "heaven!"

Ex. Horse lost, no let by bailee. Bag of jewels described. This is the rule of the common law.

This rule, it seems, in the extent to which it is carried, is found vicarous. 

venite in Eng. 2. 376. 42. 640.
Paiment.

It has been several times suggested that £10 of chattels, ought, as to third persons, who trust to it, to be conclusive evidence of ownership. (**Long, a permanent £10? — or, such, as gives an appearance of ownership, I suppose.**)

Exception to the last general rule, where the property, title to money, a bank-bill, a bill of exchange, transferable by delivery. Here, a regular transfer by bailee to a bona fide receiver, the bill in market events, binds the property. E.g. 39, 779-80. Ch. 120; Turr. 462, 464; Turr. 1778; Ch. 154. 485. — A rule of commercial policy: This property, being used as currency, otherwise, trade embarrassed — no one safe in common dealings. "From 1814."

We have no such statute as that of 21 Jac. 2; but the general principle, so far, adopted here, relative to bailments to persons in good faith, is, becoming so, are, in a great measure, conformable to the reason of the statute that it stands. (794.)

(99.) To bring a case within the statute, or the principle, on which it is founded, two requisites must concord: 1. The person in fact must be, or become, insolvent. 2. He must be, with the owner's consent, in the "order & disposition" (as well as £10) of the goods, i.e. he must, with the owner's consent, have the appearance of actual ownership.

1. A creditor, then, of bailee, who seizes the property, as bailiff, or a foreman under him, cannot hold as a bailee in such cases, (however strong bailors appearance of ownership may have been) unless the bailor is bankrupt. For if bailor is solvent, the foreman under him has his remedy on the implied warranty; & the creditor may have his satisfaction out of other property. Same rule in Court, where there is no insolvency.
III. And even when bailee is bankrupt, his creditor, or a purchaser under him, could not hold, unless his Joss, with bailee's consent, such as to give him a false credit, as the appearance of actual ownership. (Coo. *s. 82. 86. 148. Doug. 305. Cod. 353-4. Coo. 833-4. 75. 67. 27.) i.e. unless, as in the words of the Stat. 21. Inc. he is by the owner's consent, in the order of disposition, as well as Joss, of the property. Cod. 356. 1 Tre. 245. 14th. 175. — In other words; unless by the terms of the bailment, he possesses the property, as he possesses his own. For otherwise, he is not in the order of disposition of it, with the consent of the owner. Etc. An assignment of goods belonging to A, but committed to the Joss, disposition of B. to sell, to manage at pleasure, as the ostensible owner. B's creditor will hold. 14th. 165. Doug. 305. The being (wills = went) bankrupt.

Hence, in the case, where jewels were bailed in a sea-bag, to a hawker (14th. 115. 3 Tre. 44.) which he broke & pawned with the contents, by a breach of trust — bailor recovered.

So, if one lets or lends a horse or carriage to another for a short period, or a journey.

If a box of goods is left with bailee to keep, merely, they cannot be in his "order," without a violation of the terms of the bailment; they are not as with the owner's consent. Therefore a purchaser under the bailee cannot hold them (34th. 44); nor may his creditor seize them on execution.

So, if the goods are left by a purchaser only in the temporary custody of vendor, for a particular, reasonable, necessary, purpose; they are not in his "order," with vendor's consent. (Cham. v. Thompson, N. Y. C. 10. Doug. 523. 34th. 155-7. 507. — Ex.)
Bailment

From such a state of readiness or readiness, as prevents their immediate removal.

So, if a purchaser of goods leaves them with vendor, till a conveyance can be found; and vendor in the meantime becomes bankrupt.

(152)

So, where cattle were sold by sealed, in Comt. will be adjudged not good. Evidence of ownership was not sufficient; not in the "order" for mitt omnis consent.

If goods are bailed for hire, to be used by bailee, for a certain time, can bailor creditors take the use of them, for the term of the bailment, in execution? 7 H. 11, 12. I think not. Sec. 2, Sec. 3. 1, 2. Sec. 2, 13. 1, 2. Sec. 3, 2, 10. 2, 10, 6, 10. 2, 10. 11, 12, 13. 11, 13, 18, 10. It is a personal trust, not transferable by bailee. 5 H. 10, Vt, 11. 1, 2. (See note, case of Brown, which cannot be taken in execution for premises debts.) The doctrine of S. Kenyon in 5 H. 11-12, does not seem, when understood another subject, incident to impinge this opinion. Here the goods are supposed to consist of articles of furniture, belonging to a house, or leased with the house; as the term might be taken by a creditor, the furniture, being an appurtenance of it, might be taken with it. It was indeed paid of the subject declined.

For what actions, bailor and bailee are respectively, entitled against strangers, and each other.

(For the residue of this title, see Trespass, &c.)

General Rule: The bailor, having the general insolvency, may recover in trespass, trespass, or any other action, (according to the nature of the case) at the stranger, who takes, or injures the
So, tho' baiy never had the actual po6, Ex. Bill of Sale of goods not delivered (10 B. & C. 214) - v. wrongfully taken by a stranger, from vendor's pos6?

In personal things, poss. generally d. after it a po6 in law, or a constructive po6. 2 Ad. 304, 10th Ad. 438. In the case of goods, has the right of po6 of person (unless it is transferred by his own act, or by act of law), tho' the goods may be in the hands of another. (The right of present po6 in any one is a po6 in law.)

But if goods are bailed for a given time, or bailed for hire, to be used by bailee for a certain time, baiy cannot maintain trespass a trespass a stranger for taking or injuring them, during that time. 4 T. R. 489, 3 C. 237, 23, 1. R. 489. S. Id. 432. Provis. In the bill of it must have had the actual or constructive pos of the goods at the time of the injury done. 3 C. 766, 1 Bulst. 385, 4 T. R. 439. 2d. 1 Harr. P. C. 135-6. "(The action of trespass, so, in such case, must be by bailee. The for a detention, by the wrongdoer, after the term expires, baiy may doubtless sue.)"

If baiy might maintain the action of trespass or trespass, in such cases, it must be by virtue of a right in baiy to recover for the original or immediate injury. But such a right would supposion a right of po6 during the term of the bailment - which would be in derogation of the bailey's rights.
But if goods are wrongfully taken from a depositary or mandatory, or injured, while in his hand, bailor may, doubtless, maintain trespass on tort, for the immediate injury: 'You have the right of recovery on a constructive trust at the time of the injury done: Since the depositary has no right to hold any of them.' Same rule, Tor., in all cases in which the delivery is countermandable. 1 Bos. 174. P. 107. 2 Cr. 161. 7 East. 514. 3 Beev. 117. 2 H. 1. 392. 2 Bulst. 257. See "Proof of Trust" 1 Torrey.

And in the former case (3. 107) bailor may have trep. on the case ag. the mongdooer; (as in the case of real estate). 1 Ch. 187. 3 Deq. 219. 3 S. 2 Phil. 134. 8 Johns. 422. 11 H. 183. 2 H. 132. n. i.e. a special action on the case for the injury to his reversionary interest.

(103) If bailee delivers the goods to a stranger, bailor cannot have trep. ag. the latter, i.e., (in the first instance) trustee: For the stranger obtains them lawfully. (This rule must relate to a bare delivery for some lawful & honest purpose — not violating or interfering with bailor's rights: For if it do, the delivery is a breach of trust, & void, ag. ag. bailor. p. 319. 89. 117) 1 Bos. 154. 2 H. 1. 270. M. 16. 1 H. 555-7. 1 H. 237. "Mast. & Sot. 24."

p. 117. But on demand & refusal (bailee exhibiting sufficient evidence of ownership) he may have trep. ag. the stranger. For the stranger may discharge himself (comt.) by redelivering to bailor p. 300 before or during the action. (1 Bos. 262. his. 1 N. 5. 137. 1 H. 637. 75. 2 D. 284, 803. Root. 58. (4 Edw. 2. 75, 95-1.)

(106) So, too, most bailees, I conceive, all, soed vid 1 Bos. 165. H. 22. 75. 262. 535.) may maintain an action for the full value, ag. a "morgdooer." E.g., a com. carrier — a special carrier — an agent, re...
A finder of goods may recover a stranger who takes them away, or injures them, while in his pos.  See 348. Bull. N.P. 33. Cap.Bigg. 573. 577.

The ground of bailor's right to sue, as above, is said to lie in his own liability to bailor.  See 348. Bull. N.P. 33. Cap. Bigg. 573. 577.

And, therefore, it has been doubted, whether a depositary can have an action agt. a wrongdoer, under a general acceptance or an acceptance to keep as his own, because he is not liable in these except for fraud.  See 348. Bull. N.P. 33. Cap. Bigg. 573. 577.

But in, whether there is any ground for this doubt, for every bailee has a special jurisprudence in the thing.  See 112. 792. 392. 5. 1.

398. 111. 122. 245. And this is sufficient to give a right of action agt. a stranger.  See 348. 33. 33. 396-7. See 577. 3. 262. 3. 51. 32.

See 348. 33. 375. that a finder has such a jurisprudence as will enable him to "keep the thing agt. all but the rightful owner."  See 348. 33. Contra 187. (Note: 264) It is held that "909" gives an interest jurisprudence.  See 348. 33. Hence, a servant robbed may sue the hundred, on the ass't of Worth.  See 494. 3. 404. 267. 263. 12. 54. 7. 28. 37. But he is not liable over to his master.  See 348. 33. No, a servant may have an appeal of robbery, when robbed of his master's goods. 138. 69. But he is not liable to his master in case of robbery.  See 129. 30. 188. 2 Hen3. 280.
Bailment

"Thus it is said. Indeed, it is a well settled principle, that a special property is sufficient as against a wrongdoer. Bull. N. S. 38. 1 A 263, 575, 577. 75. D. 390-8. Stc. 308. Cc. If a house is torn down, a lessee for life may have taken as against a stranger, who takes over the house, timber, because of his special property. Bull. 83. see 5 6 C. 103; 202. And yet he is clearly not liable over to the reversioner.

"Thus it is said. So, an uncertificated bankrupt. (3 Osgo. 44. see 3 Osg. 45) having acquired goods after bankruptcy, may have taken as a stranger.

6.110. Indeed, a mere lawful pledge is sufficient for this purpose. 73. E. 397.

It seems clear then, that the bailee’s liability to the bailee, is not the ground of his right of action as to a wrongdoer.

(109) Indeed, as against a wrongdoer, he may, with strict propriety, be considered, as the owner.

Besides, depositary may be personally liable, i.e., he is accountable, it may be actually liable for the property. This seems sufficient. on the principle that the ground of bailee’s right to sue, is his own liability. And thd his liability to bailee, supposes gross neglect, a bad faith, yet this can furnish no cause for the wrongdoer. For no bailee (except co. com. carrier & banker) is liable to bailee, but in consequence of his own fault.

Further: No bailee is liable in all events. And how shall it be determined before hand, in any case, that there is actual liability? The principle that bailee cannot maintain the action unless being liable, would be equally an objection to any bailee’s right to sue, unless the question of his actual liability were tried in the action by the bailee against the wrongdoer. But this must be clearly improvable, impossible. Besides, the decision must not bind the bailee; nor
even the bailee, in an action by bailee.

If, then, a bailee负possible liability were the real ground of his right to sue a stranger; a depository would have the right as well as any other bailee.

Besides, it may require that the property should have this right. (110)
Bailor may be at a distance, or not in a condition to sue, immediately; so a speedy remedy necessary.

If bailee delivers the goods to a stranger, the latter may have an action agt. any third person who violates his rights. 5 B. & C. 260. 1 F. 242. 4 B. & C. 397. For he has a special property; it is said, to both bailor & bailee; i.e., he is accountable to them, & may be actually liable for the property. But his special property, or lawful possession, is sufficient as agt. a stranger. (3. 108)

An auctioneer or broker may maintain an action in his own name, or contract for goods sold, agt. the buyer; they the goods were known to belong to another. 1 H. 61. 2 H. 51. 2 Chit. 35. 7 T. 30.
For he has a beneficial interest—viz., a commission—so sells in his own name.

A factor, a factor may have such an action. 1 H. 62. 92. 93. 17 T. 235. 13 B. 130. B. & B. 4 B. & C. 47. So also may the captain of a ship, 7 T. 35, for freight. (Sidem.)

When bailor & bailee have both a right to sue, there can be but one recovery, for the full value; therefore, a recovery by one in trover, or trespass, bars the other's action for the full value. 13 C. 49. 3 & 4 B. & C. 113, 263, 265.
(112.) But does not he who first commences suit, acquire the prior right of recovery; i.e.: Does not the first commencing of an action for the full value of all, i.e., if it is prosecuted with mat the other of his action of the same nature acquire the prior right of recovery being attached by commencing the suit? This is analogous to the case of an appeal of a citizen, by master or servant. "He that first suiteth the least shall prevent the other of his action." 3 Cor. 359. Titus 127. by Lodovige J.

(113.) If the bailor has recovered satisfaction of the monger, he cannot maintain an action agst. bailiff. So he can have but one satisfaction. 1 Cor. 280. 2 Cor. 1217. Cro. Cor. 2435. 3 Cor. 124. Esp. 719. Col. 11. Del. 66.

So, I conceive, if bailor first commences his action agst. the monger, bailiff is discharged. Bailor thus raises his action agst. bailiff, as I find no authority in front. But, if it is true, that bailor, by commencing suit agst. the monger, sues bailiff of his action for the same cause, the rule must be as on principle. "Fove. 179."

The case is analogous to that of reserve & escape, in which, if the left forces agst. the reservists, the left is discharged. Gomby Esp. 610. 612. Cro. Cor. 129 n 77. Blutt 96. — Sedge.

(114) On the other hand, if bailor sues first, for the full value, he makes himself liable, at all events, to bailor. Penn. — This must, doubtless, be the case, if the bailor, by first commencing his action,
Bailment

for the full value, unto the bailee of his, "Hoven. 50."

But bailee may have an action for his special damage (if any), even the bailee has recovered the full value. According to the general rule, that damnumenum injuria gives an action; 3 T. R. 105.

If bailor himself takes the property from bailee, before bailee special property is determined, the latter may have a special action on the case, agst. the former, not tenuor in tractu, as I don't think, p. 20, in principle. 1 Pet. 240, 260, 10 Ed. 172, 1 Ed. 128, 5 T. R. 187, 2 T. R. 260. See Cap. 401, (10 Co. 59, ed.) — For these actions are for the full value of the goods of the "Hoven." — The Special Property is the ground of his right of action. But the Special Property gives a right to these actions, i.e., the full value, any strangers. I conceive. Ch. 505. Cap. 575. As agst. them, he may, indeed, properly, be considered as the owner. But, as for the bailee, who holds the property as not bailee, he has only the special property, entitling him to the custody. 1 Pet. 359, 360.

According to 13 Ch. 69., forever, tresp., on tresp., with tresp.; the bailor owns, rather, than the special, which mitigates damage. But, I conceive, that is all cases where damage is merely mitigated, when the full value is sued for, if he, returning the property before suit, or in case of tresp., the plff has originally, at least, prima facie, a right of action to recover the whole. But the bailee, as agst. the bailor, has prima facie no such right. "Hoven. 50."

But suppose the special damage greater than the amount of the property, the damages cannot be increased magnificently.
Ballment.

A strong objection to the rule in 18 C. 8. is, that, in an action by bailee agt. bailor, the value of the property is no rule of damages for the actual injury sustained; whereas, in an action agt. him, which are brought for the value of the property, seems, therefore, not adapted to the case.

If bailee delivers the property to another, contrary to the bailor's orders; he (the bailee) is guilty of a conversion. (Bow. 571. 4 T. R. 205. Travis. 2 T. R. 95.)

Generally, bailor can maintain no other action agt. bailee than detinue, or an action on the case; as, a special action on the case for negligence; trover for conversion; or a sum for, or the promise, of delivery, or implied, to redeem. (1 Bow. 287; 8. 4 Com. 257. Bull. 72. Co. 2. 244. Co. 2. 721.

When bailor is injured by bailee's negligence, he may declare in assumpsit on the agreement, or in tort. (2 Term. 3 Last 62. 1 Wins. 252. 2 St. 319.

Cheaps will not generally lie, because the original trover is lawful. 8 Co. 145. Edw. 2. 491.

Seeky, if bailee destroys the goods; here the bailment is ex tinguished. (1 T. R. 57. 4 Co. 13. 6. 3 Com. 381. 1 Wins. 248. 2 Pr. 313. 3 T. R. 405. - 2 Deq. 10th. 40. (3 Term. 260. 231.)
Of Inns & Innkeepers

At common law, any person may lawfully exercise the employment of an innkeeper, without it being inconvenient to the public: Inns being established without license. 3 Bae. 179. 4 Bst. 108. 4 Hals. 249. 2 Hale. 174. And he who assumes the character, becomes liable to the duties of an innkeeper.

But inns, from their number, may become common nuisances: the keepers of them may be indicted, at common law, as for public nuisances. 3 Bae. 179. 4 Bst. 108. 4 Hals. 249. 2 Hale. 174.

Inns, being disorders, also become public nuisances, at common law. 3 Bae. 179. 4 Bst. 108. 4 Hals. 249. 2 Hale. 174.

But alehouses in Eng. are required to be licensed, by stat. 53. 54. 55. 56. 7. 3 Bae. 179. Brut. 49. Sel. 45.

In Conn. no inn can lawfully be established, unless licensed according to the statute. License is obtained for one year, from C. 64, upon the recommendation of the civil authority, &. Stat. C. 64. Similar provisions in other states.

Keeping an inn without license, is punishable by fine, doubling for every new offense. Stat. C. 64.

For disobedience to the laws respecting innkeepers, any such license may be suspended by civil authority & selectmen, till the next 0. 0. 0. the 0. 0. may continue or remove the suspension. Stat. C. 64.

But this provision cannot extend, over the common proceeding by indictment, agt. keeping of disorderly houses.
Inns & Innkeepers

Duties of Innkeepers.

Their duties extend chiefly, only to the entertaining of travellers, and the keeping of their goods. 3 Bac. 180-1. 9 Co. 87.

(125) If an innkeeper refuses, without sufficient cause, to entertain a traveller, upon a reasonable price tendered, he is liable, not only to an action on the case, but to an indictment also. 3 Bac. 181. 4 Bk. 107. 1 Harr. 235.

His care does not extend to the person of the guest, but to his effects only. If a guest is beaten at the inn, by another, the innkeeper is not liable. 3 Bac. 181. 8 Co. 32.

If he, or his servant, sells to a guest unwholesome food or liquor; he is liable in case. 3 Bac. 182. 1 Bk. 93.

Principal rules as to his liability for goods lost, etc., under "Sailment" Sailment 58-73. Master & Servant 32-3.

(127) If a guest's house is burnt to pasture, by his own order; still the innkeeper is liable, if lost by his actual negligence; as if he leaves open the gate of the close. 3 Bac. 181. 10 Bk. 4.

Not discharged of his liability for the guest's goods, by absence, sickness, or even insanity. 3 Bac. 182. 8 Co. 629. This strictness is founded in reasons of justice to guard guests against the negligence of innkeepers.

But an infant innkeeper is not chargeable, as such. This privilege is referred to the custom. 10 Eliz. 2. 3 Bac. 182.
Inn-keepers.

If innkeeper refuses to receive a guest, because his house is full, the guest still persists in staying, taking his chance; the innkeeper is not liable for his goods. 3 Brev. 183, 8 Co. 158.

(See the analogy to the case of comm. carrier, p. 70.)

If the host requires the guest to lock his apartment, to preserve him, to be otherwise agreeable, & the guest neglects; D. Is the host liable? The opinions are contradictory. 3 Brev. 183, 8 Co. 205, No. 78, 158; vid, 4 Manke. 1 Yed. 306. I should think it unreasonable to subject him.

At any rate, merely delivering the key of an apartment to the guest does not discharge the host; for, the goods are lost by the doors being left open. 3 Brev. 183, 8 Co. 33 a.

The host is liable, tho' he does not know the kind or value of the goods. De. How is it if the guest receives him? 3 Brev. 183, 8 Co. 33 a. No. 158. 5 T.R. 273. (3. 62)

His liability is only in favour of travellers, & such as board at his inn, at the true charges to travellers. It does not extend to neighbours who lodge at his house, or boarders at the common houses, given at private houses. These he does not receive in the character of innkeeper. 3 Brev. 183, 8 Co. 32 b. 11 Ed. 3. 276.

And the theory of the law does not extend his liability to such cases.

An Inn, is a house, the owner of which holds out, that he will receive all travelling &journeymen, who are willing to pay a price, p. 68, adequate to the cost of entertainment provided. Those come in a situation, in which they are fit to be received. 3 Brev. 183, 8 Co. 283.
Innkeepers and Innkeepers.

He is not chargeable in the owner's absence, for any goods for keeping which he receives no profit, i.e., if the owner absents himself, that he is not considered a guest, the host is not chargeable of innkeeper. But while the owner is a guest, the innkeeper is chargeable for all his goods, which are infra hospitium. 3 Bza. 153. 1 Con. 3, 338. Co. Jec. 158. 3 T. R. 273. No. 125. No. 877. Feb. 179.

If a servant is robbed of his master's goods at an inn, the master may sue the host. 3 Bza. 184. Co. Jec. 224. 10 Eliz. 152. 5 T. R. 273.

Innkeeper's remedy against Guests.


And may retake either on fresh suit. 3 Bza. 165. 2 D. 438.

But he may not use the house detained. In it is in custody of the law, like a distillery. 3 Bza. 153. No. 877. St. 338.

A promise by a stranger, to pay, if the host will release the house, is good. 10 Eliz. 101. 3 Bza. 185. 1 Will. 385. 3 Barr. 1870.
